

P.E.R.C. NO. 94-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER TOWNSHIP DISTRICT NO. 4
BOARD OF FIRE COMMISSIONERS,

Respondent,

-and-

Docket No. CO-H-91-125

CAMDEN COUNTY UNIFORMED FIREFIGHTERS
ASSOCIATION, IAFF LOCAL 3249, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Gloucester Township District No. 4 Board of Fire Commissioners violated the New Jersey Employer-Employee Relations Act by unilaterally shifting apparatus mechanic work from an employee in the negotiations unit represented by Camden County Uniformed Firefighters Association, IAFF Local 3249, AFL-CIO to an employee outside that unit.

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Charging Party.

Appearances:

For the Respondent, Glickman & Ruderman, attorneys
(Steven Glickman, of counsel)

For the Charging Party, John F. Pilles, Jr., attorney

DECISION AND ORDER

On November 29, 1990, the Camden County Uniformed Firefighters Association, IAFF Local 3249, AFL-CIO filed an unfair practice charge against the Gloucester Township District No. 4 Board of Fire Commissioners. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), and (5),^{1/}

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment...."

when it replaced an apparatus mechanic who had firefighting duties and who was in IAFF's unit with an apparatus mechanic who did not have firefighting duties and who was therefore outside IAFF's unit. The charge specifies that the Board removed firefighting duties from the apparatus mechanic to exclude that position from the unit.

On April 23, 1991, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On May 3, the Board filed an Answer denying that it had violated the Act.

On June 18, 1991, Hearing Examiner Susan Wood Osborn conducted a hearing. At the end of the charging party's case-in-chief, she dismissed the subsection 5.4(a)(5) allegation that there had been a refusal to negotiate in good faith. The parties waived post hearing briefs.

On January 13, 1992, the Hearing Examiner issued her report. H.E. No. 92-19, 18 NJPER 109 (¶23053 1992). She concluded that the Board had violated subsections 5.4(a)(1) and (5) by not negotiating before taking apparatus mechanics work away from IAFF's unit and subsections 5.4(a)(1) and (3) by replacing a unit employee with a non-unit employee to avoid its negotiations obligation. She recommended that the Board be ordered to fill the vacant mechanic/firefighter position in IAFF's unit; restore the apparatus mechanic work to unit employees; and post a notice.

On January 27, the Board filed exceptions to the Hearing Examiner's analysis, conclusions, and recommended order. It

specifically objected to her conclusions that the Board had unilaterally shifted apparatus mechanic work outside IAFF's negotiations unit and that the Board had been motivated by anti-union animus in hiring a part-time mechanic without firefighting duties. IAFF filed a response urging adoption of the Hearing Examiner's recommendations.

On December 17, 1992, we rejected the Hearing Examiner's initial recommendation that the subsection 5.4(a)(5) allegation be dismissed and we remanded this matter to the Hearing Examiner to be sure that the Board understood that the subsection 5.4(a)(5) allegations were still alive and that the Board had an opportunity to respond to them. P.E.R.C. No. 93-46, 19 NJPER 43 (¶24019 1992). On remand, neither side asked to admit any new evidence. On April 21, 1993, the Hearing Examiner reaffirmed her recommendation.

On May 21, 1993, the Board filed exceptions. It asserts that the Hearing Examiner erred in reversing her initial dismissal of the subsection 5.4(a)(5) allegation and that the charging party did not meet its burden of proof on that issue. On May 28, IAFF filed a response supporting the Hearing Examiner's conclusion that the Board had violated subsection 5.4(a)(5).

The Hearing Examiner's findings of facts (H.E. at 2-9) are generally accurate. We adopt and incorporate them, with these modifications and additions. We modify finding no. 4 to state that the unit description appeared in a conformed copy of the Agreement

for Consent Election. We add to finding no. 5 that Miller's memorandum states that the new policy was instituted "to facilitate an easy and equitable transition to paid firefighters, maintenance and fire officials and employees now belonging to the IAFF Union as their bargaining agency and such classification being detailed by the State of New Jersey...." We add to finding no. 8 that the nine part-timers who did maintenance work in the Spring of 1990 also responded to fire calls during their work hours (T36), thus triggering an overtime compensation problem if they volunteered to fight fires that day. We add to finding no. 12 that there is no specific, competent evidence of any inquiry to Civil Service. We add to finding no. 14 that Kemery and McCann agreed that part-time employees had been used before IAFF filed its representation petition (T56, T93-T94). That position was last filled in 1984 or 1985 (T111). We add to footnote 6 in finding no. 14 that the interest arbitrator accepted the Board's economic package.

The record does not bear out the Board's assertions that French was hired with the understanding that he would be able to perform all the apparatus maintenance work; that French did not have the needed skills and the work had to be done by independent contractors; and that Jones mostly does work previously performed by independent contractors rather than French. The record also does not contain any information about Jones' previous employment record.

The issue of whether the Board violated subsection 5.4(a)(5) is properly before us. While the Hearing Examiner initially dismissed these allegations, that ruling was a recommendation rather than a final decision. The Hearing Examiner ruled on that issue in her first report and the parties litigated the merits of that ruling in their exceptions and responses. Our initial decision thus concluded that the subsection 5.4(a)(5) issue was still alive. However, recognizing that the Board may have relied upon the Hearing Examiner's ruling in not introducing evidence on that issue, we reopened the record and remanded the case to give it a chance to do so. It declined that invitation.

We now consider whether the record supports the Hearing Examiner's conclusion that the Board violated subsections 5.4(1)(1) and (5). We incorporate the Hearing Examiner's analysis and conclude that it does. On the merits, the Board asserts only that the Hearing Examiner erred in not finding that Jones was mostly doing work done by outside contractors, that is non-unit personnel. The record does not support that contention.

We now turn to the remedy. The Board again contends that independent contractors performed most of the work done by the part-time mechanic and that greater specificity is required as to what job functions would be restored to the unit. It submits that the proper order would be to require it to negotiate with IAFF about those job functions. The factual premise of that argument is

unsupported -- the record does not establish that the work done by the part-time mechanic was previously done by independent contractors. The apparatus work should therefore be returned to IAFF's unit.

The Board also asserts that it has a prerogative to decide not to fill a vacancy and that we should not order it to fill the full-time apparatus mechanic/firefighter position. We believe that this part of the recommended order is unnecessary. The unfair practice will be remedied once the Board carries out our directive to restore the apparatus mechanic work to employees in IAFF's unit.^{2/}

ORDER

The Gloucester Township District 4 Board of Fire Commissioners is ordered to:

I. Cease and desist from

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally shifting apparatus mechanic work from an employee in the negotiations unit represented by Camden County Uniformed Firefighters IAFF Local 3249, AFL-CIO to an employee outside that unit.

^{2/} Given our conclusion that subsections 5.4(a)(1) and (5) were violated and our remedial action, we need not consider whether subsection 5.4(a)(3) was violated as well.

B. Violating its obligation to negotiate in good faith, particularly by unilaterally shifting apparatus mechanic work from an employee in the negotiations unit represented by IAFF to an employee outside that unit.

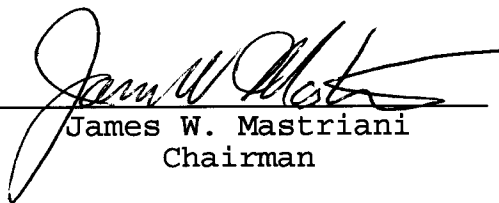
II. Take this action:

A. Restore the apparatus mechanic work to the employees in the IAFF's unit.

B. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

C. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan and Wenzler voted in favor of this decision. None opposed. Commissioner Smith abstained from consideration.

DATED: September 24, 1993
Trenton, New Jersey
ISSUED: September 24, 1993



NOTICE TO EMPLOYEES

PURSUANT TO

AN ORDER OF THE



PUBLIC EMPLOYMENT RELATIONS COMMISSION

AND IN ORDER TO EFFECTUATE THE POLICIES OF THE

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED.

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally shifting apparatus mechanic work from an employee in the negotiations unit represented by Camden County Uniformed Firefighters IAFF Local 3249, AFL-CIO to an employee outside that unit.

WE WILL cease and desist from violating our obligation to negotiate in good faith, particularly by unilaterally shifting apparatus mechanic work from an employee in the negotiations unit represented by IAFF to an employee outside that unit.

WE WILL restore the apparatus mechanic work to the employees in the IAFF's unit.

Docket No. CO-H-91-125

GLOUCESTER TOWNSHIP DISTRICT NO. 4
BOARD OF FIRE COMMISSIONERS

(Public Employer)

Dated: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372